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Remarks:

*Amendments to the claims:*

Claims 1-14 are pending in this application. By this Amendment, claim 2 is amended, and claims 12-14 are added. Claim 2 was amended to correct a typographical error therein.

No new matter is added to the application by this amendment. New claims 12-14 find support in Figs. 1-3, as originally filed, and within the present specification, as originally filed, at, for example, paragraphs [0020] and [0021] of U.S. Patent Publication No. 2006/0249593 (hereinafter "the '593 publication") for the present application

*Regarding the rejection of claim 1-10 under 35 USC 103(a) as being unpatentable over U.S. Patent Publication No. 2003/0005620 to Ananth et al. (hereinafter "Ananth") in view of U.S. Patent No. 2,616,759 to Walsh:*

Applicants respectfully traverse the rejection of the foregoing claims in view of Ananth and Walsh.

Prior to discussing the merits of the Examiner's position, the undersigned reminds the Examiner that the determination of obviousness under § 103(a) requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966): (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *McNeil-PPC, Inc. v. L. Perrigo Co.*, 337 F.3d 1362, 1368, 67 USPQ2d 1649, 1653 (Fed. Cir. 2003). There must be some suggestion, teaching, or motivation arising from what the prior art would have taught a person of ordinary skill in the field of the invention to make the proposed changes to the reference. *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). But see also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007).

A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000) A critical step in analyzing

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the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

It must also be shown that one having ordinary skill in the art would reasonably have expected any proposed changes to a prior art reference would have been successful. *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1207, 18 USPQ2d 1016, 1022 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988); *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976). "Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

With respect to independent claims 1 and 2, the Patent Office acknowledges that Ananth fails to teach a cover portion adapted to engage within the shaped recess (see pages 3 and 4 of the present Office Action). The Patent Office introduces Walsh as allegedly remedying the deficiencies of Ananth by allegedly teaching a device and a method for emanating volatile material to the atmosphere having a cover portion in combination with a connecting member that engages within the shaped recess in order to simplify converting the device between open and closed conditions. The Patent Office alleges that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the process in Ananth with the cover/connecting member combination in order to simplify converting the device between open and closed conditions as explained by Walsh. Applicants respectfully disagree with these allegations by the Patent Office.

Even if Ananth is modified by Walsh as alleged by the Patent Office, the resulting combination fails to achieve the presently claimed device and method of claims 1 and 2,

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respectively. Walsh does not remedy the deficiencies of Ananth because Walsh fails to teach or suggest a cover portion including a housing element adapted to engage within a shaped recess in the upper portion of the porous wick when the dispensing device is assembled as required by independent claims 1 and 2.

Walsh teaches a wick that is permanently connected to the cap or, in other words, the wick is retained to the cap (see col. 1, lines 29-34, col. 1, line 52 – col. 2, line 14 and col. 3, lines 30-38). Additionally, Walsh teaches a device wherein the cap is connected to the wick in such a way that the wick and cap are maintained against substantial relative axial or vertical movement (see col. 3, lines 34-36).

In contrast, the presently claimed invention requires (I) a refill having a reservoir and a porous wick and (II) a cover having a housing element adapted to engage within the shaped recess in the upper portion of the porous wick when the dispensing device is assembled. The present claims do not recite that the wick is permanently connected or retained to the cap as disclosed by Walsh. Thus, modifying Ananth to incorporate Walsh's cap (having a permanently connected wick) does not achieve the presently claimed invention because the resulting combination does not have a refill having a reservoir and a porous wick. Instead, the resulting combination would have a refill and a cap having a permanently connected wick.

Ananth and Walsh, taken singly or in combination, fail to teach or suggest a refill which includes a reservoir and a porous wick and a cover portion including a housing element adapted to engage within a shaped recess in the upper portion of the porous wick when the dispensing device is assembled as recited by claims 1 and 2.

Because the features of independent claims 1 and 2 are not taught or suggested by Ananth and Walsh, taken singly or in combination, these references would not have rendered the features of independent claims 1 and 2 and their dependent claims obvious to one of ordinary skill in the art.

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In view of the foregoing, reconsideration and withdrawal of this rejection of claims 1-10 are respectfully requested.

*Regarding the rejection of claim 11 under 35 USC 103(a) as being unpatentable over Ananth and Walsh in view of U.S. Patent No. 6,361,752 to Demarest et al. (hereinafter "Demarest"):*

Applicants respectfully traverses the rejection of the foregoing claims in view of Ananth and Walsh in view of Demarest.

The Patent Office acknowledges that Ananth and Walsh fail to teach use of a fan (see page 7 of the Office Action). The Patent Office introduces Demarest as allegedly teaching the deficiencies of Ananth and Walsh. The Patent Office alleges that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the modified device in Ananth and Walsh with the fan in order to move air across the material and blow the resultant vapor into the surrounding environment as taught by Demarest. Applicants respectfully disagree with the allegations by the Patent Office.

Demarest does not remedy the deficiencies of Ananth and Walsh as described above with respect to independent claim 1, from which claim 11 indirectly depends. Specifically, Demarest fails to teach or suggest a refill which includes a reservoir and a porous wick and a cover portion including a housing element adapted to engage within a shaped recess in the upper portion of the porous wick when the dispensing device is assembled as recited by claims 1. At best, Demarest discloses that if a liquid volatile material or carrier substance is to be heated by the coil to vaporize the volatile material, the apparatus includes a wick that is in contact with the liquid and extends to the vicinity of the coil to transport the liquid to the coil for heating (see col. 2, lines 45-54).

Ananth, Walsh and Demarest, taken singly or in combination, fail to teach or suggest a refill which includes a reservoir and a porous wick and a cover portion including a housing element adapted to engage within a shaped recess in the upper portion of the porous wick when the dispensing device is assembled as recited by claim 1.

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Because the features of independent claim 1, from which claim 11 indirectly depends, are not taught or suggested by Ananth, Walsh and Dmarest, taken singly or in combination, these references would not have rendered the features of claim 11 obvious to one of ordinary skill in the art.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

The early issuance of a *Notice of Allowability* is solicited.

Conditional Authorization for Fees

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, including any fees for any required petition for an appropriate extension of time, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;



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Enclosures – as indicated

09 Sep 2009  
Date:

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